

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
FERDINAND JUAN Y VIDAD, GIL MIGUEL Y CUDAL,
ACCUSED-APPELLANTS. JOHN DOE (AT LARGE), ACCUSED.**

G.R. No. 113710. March 07, 1996

Ponente: PUNO, J.

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PUNO, J.:

In an Information, dated February 25, 1991, appellants FERDINAND JUAN Y VIDAD AND GIL MIGUEL Y CUDAL, together with John Doe, were charged with MURDER for the death of FRANKLIN BALLESTEROS.[1] The crime was allegedly committed as follows:

"That on or about the 22nd day of February, 1991, in Quezon City, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the said accused, conspiring together, confederating with and mutually helping one another, with intent to kill, treachery, superior strength and evident premeditation, did then and there, willfully, unlawfully and feloniously attack, assault and employ personal violence upon the person of FRANKLIN BALLESTEROS y DE GARCIA, by then and there stabbing the former with the use of a fan knife, thereby inflicting upon him serious and mortal wounds which were the direct and immediate cause of his untimely death, to the damage and prejudice of the heirs of said FRANKLIN BALLESTEROS Y DE GARCIA, in such amount as may be awarded to them under the provisions of the Civil Code.

"Contrary to law."

When arraigned, appellants pleaded 'not guilty' to the crime charged. Trial on the merits ensued against them while their cohort has remained at large.

The prosecution evidence[2] reveals that, at around midnight, on February 21, 1991, Franklin Ballesteros, his brother Constantino, and their neighbor, Joel Pagco, went to Markfoods Ihaw-Ihaw Restaurant, a beerhouse located at E. Rodriguez Avenue corner Quezon Avenue, near Welcome Rotonda in Quezon City. They consumed a few bottles of beer until the restaurant closed at about 4:00 a.m. the following day, February 22, 1991.

When they were prepared to go, Constantino Ballesteros and Joel Pagco proceeded to the exit door fronting Quezon Avenue. They waited for Franklin at the door as the latter was still talking to Karina Susano, one of the restaurant's waitresses. Joel and Constantino noticed three (3) men hanging around a few meters away from the restaurant. Two of them were later identified as appellants Ferdinand Juan and Gil Miguel. In no time, Franklin stepped out of the restaurant and followed his companions.

Franklin's group had barely left the restaurant when accused-appellants' group followed them. Constantino became apprehensive and suggested to Joel that they pass by near the Welcome Rotonda police detachment. The suggestion came too late. Gil and an unidentified cohort suddenly grabbed Franklin's arms. At that time, Franklin was about three (3) meters behind his companions.

Constantino tried to help his brother Franklin, but he was boxed by Gil. It was Ferdinand who drew a knife and

stabbed Franklin. Constantino heard his brother scream: "May tama ako." He shouted to his wounded brother to seek succor in the nearby United Doctors Medical Center. Too weak, Franklin slumped on the ground.

Joel also failed to come to Franklin's aid as he was startled by the sudden attack. He recounted that Ferdinand went in front of Franklin and stabbed the latter with a fan knife. He tried to help the fallen Franklin but someone hit him at the back. People then started to gather at the scene and Ferdinand, Gil and their companion fled on board a tricycle.

With the help of some tricycle drivers, Franklin was rushed to the hospital. The effort was futile. He died as a result of "cardio-respiratory arrest due to shock and hemorrhage secondary to a stab wound in the trunk." [3]

Constantino remained with his brother at the hospital while Joel reported the incident to the police detachment beside the hospital. On duty were SPO3 Romeo Catolin and defense witness PO3 Salvador Camacho. PO3 Catolin investigated the incident. While Joel was narrating the incident, someone shouted that one of the suspects was at the "Palabok King," an eatery adjacent to the police station, about seven (7) meters away.

PO3 Catolin and Joel rushed to the eatery. True enough, they saw Ferdinand sitting on a stool. Joel immediately pointed to Ferdinand as the one who stabbed the victim. Ferdinand was brought to the police station for investigation.

Curiosity seekers watched as Ferdinand was being investigated. Gil mingled with the crowd outside the detachment. He caught the eye of Joel who immediately informed the police. Sensing he had been recognized, Gil ran. Joel and PO3 Catolin chased and nabbed him near the PLDT Office along España Street. Gil was also brought to the police station.

During the investigation, Ferdinand and Gil did not disclose their kinship and pretended they did not know each other. [4] Constantino followed Joel at the police station. He lost his temper when he saw Ferdinand. He boxed Ferdinand three (3) times until cooler heads pacified him. Ferdinand's nose bled and he was brought to the hospital for treatment.

Franklin's death deeply saddened the Ballesteros family, particularly his mother, Virginia Ballesteros. Her son just passed the Civil Engineering licensure examination. She was expecting him to help her support his brothers and sisters.

Accused-appellants offered a different version of the incident.

Ferdinand claimed that in the evening of February 21, 1991, he went to the house of Efren Arellano, in San Andres Bukid, Manila, to study. He stayed at his friend's house until 1:00 a.m. of February 22, 1991. He then proceeded to Quiapo and had a snack. Thereafter, he took a jeepney and alighten at the corner of Quezon Boulevard and E. Rodriguez Avenue, Quezon City at 3:40 a.m.

Upon alighting from the jeepney, someone suddenly hit him on the face. He suffered a cut above the left eyebrow and felt dizzy. He did not recognize his attacker. He hurriedly took a tricycle and went home.

Ferdinand was treated by his sister, Estrellita Araza, who also advised him to report the incident to the police. It was then 4:00 a.m.

Ferdinand, accompanied by his nephew Gil, proceeded to the police station. When they saw a crowd gathered outside the station, they went instead at the nearby "Palabok King" where they heard sketchy accounts of the stabbing incident. Ferdinand told Gil to go to the station and find out what happened.

Ferdinand was waiting for Gil when Joel and PO3 Catolin arrived at the "Palabok King." Joel pointed to

Ferdinand and said: "Ayan po, isa 'yan sa sumaksak. Sinuntok ko pa nga iyan." Ferdinand recognized Joel as the one who boxed him when he alighted from the jeepney. Forthwith, PO3 Catolin brought Ferdinand to the police station for investigation.

Constantino also arrived at the police station. Upon seeing Ferdinand, Constantino allegedly exclaimed: "Ikaw pala ang sumaksak sa kapatid ko." Thereafter, Constantino threw a punch at his nose.

On his part, Gil averred that, while he was snooping around outside the police station, he saw Joel talking to PO3 Camacho. Joel mistook him as one of the assailants, saying: "Isa ka pa." Later on, Joel retracted and PO3 Camacho allowed him to leave.

Gil did not return to the eatery but headed for home. To his surprise, Joel went after him. The police, led by PO3 Catolin, also chased him. He was collared near the PLDT Building along España Street.[5] Upon his arrest, Joel accused him as one of the assailants. PO3 Catolin then ordered him to board a Ford Fiera. PO3 Camacho who was on board the Fiera did not bother to inquire why he was arrested.[6] In the precinct, he found his uncle Ferdinand in police custody.

PO3 Salvador Camacho testified for the defense. He claimed that he and PO3 Catolin were in front of the detachment when they noticed a man (the victim) slump on the ground. Joel came and reported the stabbing incident.

After the investigation, PO3 Camacho and Joel tarried outside the detachment. Gil passed by. Looking at Gil, Joel said: "I think you are one of them." Gil denied the accusation. Joel retracted his accusation, thus, Gil was allowed to leave.

The trial court gave greater credence to the prosecution evidence. It declared accused-appellants guilty of murder as the killing was attended by treachery and evident premeditation. The dispositive portion of the trial court decision, dated January 27, 1991, reads:

"WHEREFORE, premises considered, accused FERDINAND JUAN (Y VIDAD) AND GIL MIGUEL Y (CUDAL) are hereby found guilty beyond reasonable doubt of the crime of murder and sentenced to serve the penalty (of) reclusion perpetua and to (sic) pay the heirs of deceased FRANKLIN BALLESTEROS the sum of fifty thousand (P50,000.00) pesos for and as moral damages, fifty thousand (P50,000.00) pesos as indemnity, fifty thousand (P50,000.00) pesos as actual damages plus costs.

"SO ORDERED."

Hence, this appeal. Accused-appellants contend that:

I

THE TRIAL COURT ERRED IN NOT RECOGNIZING THE ACCUSED-APPELLANTS' SUBMISSION THAT THEY WERE SOMEWHERE ELSE AT THE TIME OF THE COMMISSION OF THE CRIME AND THAT THEY WERE NEVER AT THE SCENE OF THE CRIME.

II

THE TRIAL COURT ERRED IN NOT GIVING CREDENCE TO THE WITNESSES FOR THE DEFENSE, AS COMPARED TO THE BIASED CONTRADICTORY AND INCONSISTENT TESTIMONIES OF THE PROSECUTION'S WITNESSES WHO ARE RELATIVES OF THE VICTIM.

III

THE TRIAL COURT ERRED IN HOLDING THAT THE ACCUSED-APPELLANTS HAD PARTICIPATED OR CONSPIRED IN THE STABBING OF THE VICTIM.

IV

THE TRIAL COURT ERRED IN HOLDING THAT TREACHERY AND EVIDENT PREMEDITATION WERE PRESENT IN THE INSTANT CASE WHICH QUALIFIED THE CRIME TO MURDER CONSIDERING THAT THE BIG (sic) HEIGHT AND BIG BODY OF THE VICTIM CANNOT COMPARE WITH THE SMALL (sic) HEIGHT AND SMALL BODY OF THE ACCUSED-APPELLANTS, ALLEGED ATTACKERS OF THE VICTIM.

V

THE TRIAL COURT ERRED IN EXHIBITING MANIFEST BIAS AND PARTIALITY IN FAVOR OF THE PROSECUTION IN FREQUENTLY INTERRUPTING DEFENSE COUNSEL FOR ALLEGEDLY ASKING LEADING QUESTIONS FROM THE PROSECUTION AND DEFENSE WITNESSES SUCH THAT APPELLANTS WERE NOT ABLE TO GET A FAIR TRIAL OF THEIR CASE BEFORE THE TRIAL COURT.

VI

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANTS AND IN NOT ACQUITTING THEM OF THE CRIME OF MURDER, THEIR GUILT NOT HAVING BEEN PROVEN BEYOND A REASONABLE DOUBT.

We affirm the judgment of conviction.

The well-settled jurisprudence is that the trial court's calibration of the credibility of witnesses should not be disturbed since it is in a better position to gauge whether or not they had spoken the truth. Trial courts have the opportunity to see witnesses as they testify in court, an opportunity not readily available to appellate courts.[7]

We find no reason to depart from the above ruling. We have examined the records and we confirm the trial court's findings that the testimonies of the eyewitnesses are more trustworthy than the testimonies of the defense witnesses, particularly the appellants.

Eyewitnesses Joel and Constantino positively identified appellants as the malefactors. They could not have contrived the actual participation of appellants to the crime in view of the relatively short period of time that elapsed between the stabbing incident and appellants' arrest that tragic day. Neither is their identification of appellants susceptible of doubt. They had the opportunity to see appellants at close range on two (2) occasions: first, when appellants were waiting for the victim outside the restaurant and, second, when they attacked the victim.

Appellants discredit Joel and Constantino due to their alleged inconsistent testimonies on how Gil boxed the victim. Joel testified that Gil held the right arm of the victim and punched him with his left fist.[8] In contrast, Constantino testified that Gil used his right fist in boxing the victim.[9] This inconsistency is trivial. It is immaterial whether Gil used his left hand or right hand in boxing the victim. More important is the certainty of Joel and Constantino that it was Gil who restrained and boxed the victim before Ferdinand stabbed him to death.

Appellants assert, further, that Constantino and Joel should not be believed because of their relationship with the victim. This contention has long been discredited by this Court. Relationship per se of a witness with the victim does not necessarily mean that he is biased. On the contrary, his relationship with the victim would deter him from indiscriminately implicating anybody to the crime. His natural interest is to identify and secure the conviction of the real culprit to obtain justice for the death of a relative.[10] Hence, Constantino's blood-tie with the victim did not necessarily corrupt the truth of his testimony. Similarly, the fact that Joel is a neighbor of the victim cannot diminish the trustworthiness of his testimony. Geographical accidents do not measure a person's truthfulness.

In affirming the trial court, we also take into consideration the spontaneity of Constantino's reaction upon seeing Ferdinand at the police detachment. While we do not condone Constantino's conduct in hitting appellant at the precinct, his reaction bolsters the fact that it was indeed Ferdinand who stabbed the victim to death.

The testimony of PO3 Camacho did not create a dent on the cause of the prosecution. The trial court dismissed him as an incredible witness. As observed by the trial court:[11]

"The manner that PO3 Camacho answered the questions propounded on him by defense counsel and the continued use of leading questions by counsel and his materially contradictory statements destroyed his credibility and reveals his lack of knowledge or information on the events of the morning. The Court appreciates the importance of the testimony of the witness to the cause of the defense, however, what appeared to the Court during the lengthy direct and re-direct examination of the witness was an apparent attempt to put words into the witness' mouth. Several times during the taking of witness' testimony, the Court has called the attention of counsel on the manner of questioning. The inconsistencies in the testimony, when reviewed, show that prior statements made on direct testimony were over clarified through the use of suggestive and leading questions. x x x"

We need not say more.

It is in vain for defense counsel to charge that the trial judge displayed arbitrariness and bias against appellants during the trial. Other than his say so, the alleged partiality of the trial judge in favor of the prosecution lacks clear evidentiary support. Indeed, it does not appear that the defense moved for the disqualification of the trial judge on the ground of bias.

Appellants chose the weakest defense in criminal cases, alibi. It cannot succeed in the face of their positive identification by the prosecution witnesses.[12] Besides, it was not sufficiently shown that the alleged whereabouts of appellants at the time of the killing was far enough to foreclose the possibility for them to be at the crime scene.[13]

For reasons only known to them, appellants Ferdinand and Gil chose to hang around the police station after the killing. Non-flight, by itself, is not always an indication of innocence. We find their excuse - that Ferdinand would like to report the untoward incident when he alighted from the jeepney - too shallow and incredible. By his own admission, Ferdinand did not recognize his attacker.

Undoubtedly, appellants had conspired to commit the crime. Their conspiracy can be deduced from the fact that they acted in concert to achieve a common criminal design to kill the victim.[14] They waited for the victim outside the restaurant, stalked the latter and suddenly stabbed him to death. They also fled together after accomplishing their objective.

We hold, however, that the circumstance of evident premeditation was not established by the prosecution. There is no evidence of (1) the time when the offenders determined to commit the crime; (2) an act manifestly indicating that they have clung to their determination; and (3) a sufficient lapse of time between the determination and execution to allow them to reflect on the consequences of their act.[15]

Be that as it may, the killing was done with treachery which qualified the crime to Murder. The evidence shows that the mode of attack on the victim was consciously and deliberately adopted by appellants. Franklin had no inkling on the danger to his life prior to the attack. It was also proved that, without any warning, Gil and his still unidentified cohort restrained Franklin's hands. He was thus totally defenseless when Ferdinand delivered the fatal knife thrust.

There being no aggravating or mitigating circumstance in this case, appellants should suffer the penalty of

reclusion perpetua.[16]

WHEREFORE, appellants' conviction of the crime of Murder is AFFIRMED. No costs.

SO ORDERED.

Regalado (Chairman), Romero, and Mendoza, JJ., concur.

[1] Docketed as Criminal Case No. Q-91 -81506 before the Quezon City Regional Trial Court, Branch 88.

[2] The evidence for the prosecution came from the testimonies of eyewitnesses Constantino Ballesteros and Joel Pagco, PO3 Romeo Catolin, and Medico-Legal Officer Dario L. Gajardo.

[3] Exhibits "B" and "K".

[4] Ferdinand Juan is an uncle of Gil Miguel.

[5] TSN, July 28, 1992, pp. 19-20, 22-23.

[6] TSN, September 22, 1992, p. 6.

[7] People vs. Supremo, G.R. No. 100915, May 31, 1995, 244 SCRA 548, 551.

[8] TSN, November 27, 1991, p. 6.

[9] TSN, December 5, 1991, p. 5.

[10] People vs. Macagaling, G.R. Nos. 10913 1-33, October 3, 1994, 237 SCRA 299.

[11] RTC Decision, dated January 7, 1994, p. 8; Rollo, p. 248.

[12] People vs. Miranday, G.R. No. 111581, March 23, 1995, 242 SCRA 620.

[13] Ibid, p. 626.

[14] People vs. Mallari, et al., G.R. No. 104891, February 6, 1995, 241 SCRA 113, 120; People vs. Soldao, et al., G.R. No. 80225, March 31, 1995, 243 SCRA 119, 127.

[15] Article 14 (13), Revised Penal Code; People vs. Soldao, supra, at p. 127.

[16] Article 248 of the Revised Penal Code.

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